and that he has no longer any authority to represent the employees in the case and that the Tribunal might proceed to pass orders according to law.

(4) Now that the President of the I Party admits that the Union is no longer in existence and that, therefore, he was not going to represent either that Union or the employees, it follows that the workmen are not interested in the prosecution of this case. The burden of proving the IV Issue is on the workmen. Since the workmen have lost all interest in the case, they are not adducing any evidence. I must therefore hold the IV Issue against them.

(5) In view of the fact, that the I Party Union is not interested in showing that the dispute referred to this Tribunal is an Industrial Dispute, it must follow that the dispute continues to be an individual dispute and that this Tribunal has no jurisdiction to deal with it.

(6) For these reasons, I make an Award rejecting the Reference.

R. KRISHNA SETTY,
Presiding Officer, Industrial Tribunal,
Bangalore.

ORDER

Bangalore, dated the 5th July 1965.

S O. 2779.—WHEREAS by State Government Order No. LLH 491 LLD 59, dated 25th November 1959, the Industrial Dispute between the Workmen and the Management of Sri A. K. Appanna Setty & Sons, Rice & Oil Mills, Tumkur and 9 other Factories at Tumkur was referred to the Industrial Tribunal, Bangalore, for adjudication;

AND WHEREAS the Industrial Tribunal has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette.*

[No. PLM 320 LLD 65.]

By Order and in the name of the Governor of Mysore,

G. G. PUROHIT, *Under Secy.*

GOVERNMENT OF MYSORE

(LABOUR DEPARTMENT).

Labour Dispute :—Industrial Dispute between the workmen and the Management of the New Taj Mahal Cafe (P) Ltd., Mangalore.

Award of the Labour Court, Hubli—published.

Read the following papers :—

1. Letter No. 325/65/66, dated 19th June 1965 from Shri P. T. Kadkol, Presiding Officer, Labour Court, Hubli.

IN THE COURT OF THE PRESIDING OFFICER.
LABOUR COURT, HUBLI.

Dated this 19th day of June 1965.

Present :

Sri P. T. Kadkol, B.Sc., LL.B., Presiding Officer.

Ref. No. 4/65

Between :

Workmen represented by The Secretary, Vanijya Shramika Sangha, Felix Pai Bazaar, Mangalore-1.

.....*I Party.*

and

The Management of New Taj Mahal Cafe (P) Ltd., Car Street, Mangalore-1.

...*II Party.*

Reference : Government Order No. PLM 522 LLD 64, Dated 30th December 1964.

AWARD

The Government of Mysore, being of opinion that an Industrial Dispute exists between the workmen and the Management of the New Taj Mahal Cafe (P) Ltd., Mangalore, have referred it for adjudication to this Court U/s 10 (1) (c) of the Industrial Dispute,

Act, 1947 by their Order No. PLM 522 LLD 64, dated December 30, 1964. The Points of Dispute referred for adjudication as formulated in the Order of reference are :—

> "Are Sriyuths B. Panduraya Gowda (No. 1341) and K. Krishna (No. 1530) workers of New Taj Mahal Cafe (P) Ltd., Car Street, Mangalore entitled for reinstatement with back wages and continuity of service or to any other relief ?"

2. The cause of the two aggrieved Workmen has been sponsored by the Vanijya Shramika Sangh, Mangalore, which is a registered Trade Union. This Union as representing the Workmen, is the First Party and the Management of the New Taj Mahal Cafe is the Second Party in this proceeding. The Union is represented by Mr Prabhakar Ghate, and the Management by Mr. K. Shasnidhar Rao.

3. In response to the Notices issued by this Court, the Union has put in its Claim Statement and the Management has put in its counter statement.

4. One of the contentions raised in the counter statement is, that this Court has no jurisdiction to entertain this Reference and adjudicate upon it, as the dispute referred is not an Industrial Dispute. This contention, however was given up by the management and this fact has been recorded in the Order Sheet dated 17th March 1965, under the signatures of the learned representatives of both the parties.

5. Both the parties have led oral evidence and produced some documents. The union has examined the aggrieved workmen Panduraya Gowda (W.W. 1) and K. Krishna (W.W 3) and a witness by name Shivappa Chandu (W.W. 2) and produced Eighteen (18) documents marked in evidence as Exs. P. 1 to P. 18. The Management has examined two of its officials, namely Assistent Manager Gopal Nayak (M.W. 1) and Clerk Balakrishna Kamath (M.W 2) and produced twenty-six (26) documents marked as Exs. M. 1 to M. 26. Some of the documents produced by the Union are the same as those produced by the management.

6. The averments made by the union, with respect to Panduraya Gowda, in the claim statement are these :—

> "Panduraya Gowda, a permanent workman, was serving as a 'supplier' in the Maidan Hotel of the Second Party; on 5th March 1964, he was refused work by

the Manager of that Establishment at about noon, on some flimsy grounds; thereupon he went to the Administrative Officer of the second party to report the matter; the General Manager promised to look into the matter and intimate the result; though he reported for duty thereafter, he was not given any work; after a protracted correspondence, the management asked him to report for duty; he reported for duty on 3rd August 1964; but out of spite for him, he was asked to do duty as "cleaner", which was not his normal duty; he protested and demanded the work of a "supplier" or any other work equivalent to it; he was, however, asked to clear out; he was not bound to carry out the order of the Management to work as "cleaner" as it was neither legal nor justified; as he was refused his normal work, he has to remain unemployed and so, the management should be directed to reinstate him with all back wages and continuity of service etc.,"

7. The contentions raised by the management with respect to the claims of Panduraya Gowda are these :—

"Panduraya Gowda asked the Manager of the Maidan Hotel, where he was working, to relieve him and settled his accounts; the Manager asked him to approach the Administrative Office; he approached the Administrative Office and made the same request on 5th March 1964; he was asked to tender his resignation and receive his dues; then he left the office saying that he would do so; he did not, however, turn up thereafter with his letter of resignation nor did he report to duty; he remained absent; then the Manager called upon him to show cause why disciplinary action should not be taken against him; after waiting for some time, the management wrote a letter to him on 27th July 1964 informing him that if he failed to report for duty forthwith, the management would presume that he was not interested in the employment and take suitable action against him; thereafter he joined duty on 3rd August 1964, worked for some hours and thereafter remained absent; thereafter the management issued him a notice on 5th August 1964 asking him why action should not be taken against him for remaining absent from the afternoon of 3rd August 1964; he gave a reply to the management stating that as he was given the

work of a 'cleaner' though he was a 'supplier' he was not bound to carry out the illegal order; the management wrote back to him denying the averments made by him and informing him that he was only a 'cleaner' and had remained absent from the afternoon of 3rd August 1964; the management did not take any action against him; it has neither dismissed nor discharged him from service, nor terminated his services in any other way; hence the question of reinstatement does not arise at all; etc.

8. From these pleadings, it is evident that the first question that arises for decision in the case of Panduraya Gowda is, whether his services have been terminated by the management either b dismissal or discharge or in any other manner or he has himself remained absent from duty. The second question arising for decision is, whether he was serving as a 'supplier' or as a 'cleaner'.

9. The second party has maintained a service register of its empoloyees. The service register number of Panduraya Gowda is 1341. A true copy of the register pertainiug to Panduraya Gowda has been produced at Ex. M. 24, under the signatures of the representatives of both parties. It contains various particulars. We find from the entries appearing therein, that Panduraya Gowda joined the service of the second party on 20th February 1961 as a 'cleaner' and before that, he was working as a 'cleaner' in some Hotel at Kulshekar, a suburb of Mangalore.

10. It is admitted on both hands that the workmen in the several Hotels of the second party, struck work for a day on 23rd November 1963 and thereafter, were on 'Satyagraha' from 4th February 1964 to 19th February 1964. The Satyagraha consisted of the workmen picketing at the Hotel doors requesting the customers not go into them for eating and drinking. The case of the union is that on account of these two incidents, the management took a hostile attitude towards the workmen and particularly towards those, who were members of the First Party Union, holding it to be responsible for the strike as well as the Satyagraha. It is the case of the union that Panduraya Gowda has been victimised by the management.

11. The management has maintained Attendance Registers for their employees, a separate one, for each Hotel. As asked by the union, the management has produced the relevant Registers, pertaining to the Maidan Hotel (Ex. P. 17) and the Hampankatta Hotel (Ex. P. 18). Panduraya Gowda was working in the Maidan Hotel. In the month of February 1964, (*vide* Ex. P. 17 (a)) he

has been marked as being present for the first 3½ days, as being on strike or Satyagraha from the 4th to 19th, as being absent from 20th to 24th and as being present from 25th to 29th. These markings have not been challenged. It may be noted here only, that the satyagraha of the workmen came to an end; by settlement between the parties in the presence of the Deputy Commissioner, Mangalore, on 19th February 1964, as per the document at Ex. P.2. Workmen were given time for one week to resume duties after 19th February 1964. Then in March 1964, Panduraya Gowda has been marked present for the first 4½ days and absent on all the remaining days. On all the days in April, May June and July, he has been marked absent. In the months of January, February, March and April, the name of Panduraya Gowda appears at serial Nos. 67/92, 67/94, 61/93 and 58/89 respectively. In the remaining months of May, June and July his name appears last, at serial Nos. 82/82, 82/82 and 92/92. These entries are in a different ink and different handwriting from the rest of the entries, in those months. It is possible to argue and it has been so urged by the union that the markings in the name of Panduraya Gowda for the months of May, June and July are interpollations.

12. Now the case of the union is that Panduraya Gowda was refused work from the afternoon of 5th March 1964 on some flimsy ground, whereas the case of the management is that he remained absent from then. What that 'flimsy ground' was, has neither been disclosed in the claim statement nor stated in his deposition by Panduraya Gowda. According to Panduraya Gowda, the Manager of the Maidan Hotel, who refused him work, was Dayanand Prabhu and at his bidding, he went to the Administrative Office and met there, the General Manager, Pandurang Shenoy, who told him that he would look into the matter and asked him to go back to the Maidan Hotel and when he went back to the Hotel Dayanand Prabhu did not take him on duty. On the other hand, the case of the management is that on 5th March 1964, Panduraya Gowda asked the Manager of the Maidan Hotel to relieve him and settle his dues; that Manager directed him to the Administrative Office and that office asked him to tender his resignation if he wanted his accounts to be settled; then he went away saying that he would do so; thereafter he did not send his resignation nor turned up for duty.

13. Which of these two rival versions should be accepted, will be the question. So far as oral evidence goes, there is no

evidence to support the account given by Panduraya Gowda, beyond his own word. On the side of the Management, Dayananda Prabhu and Pandurang Shenoy have not been examined. The Assistant Manager of the Maidan Hotel, Gopal Nayak, has been examined (M. W. 1); but he has said nothing the incident of 5th March, nor has any question been put to him about it in his cross-examination. The Second witness Balkrishna Kamat (M. W. 2) who is a clerk in the Administrative Office, also, has said nothing about it.

14. Then Panduraya Gowda has stated that on the 6th March 1964, he again went to the Maidan Hotel for duty but Dayanand Prabhu did not allow him to resume and therefore, he went to the First Party Union, met Mr. Prabhakar Ghate and told him orally what had happened.

15. After this, some correspondence has passed between Panduraya Gowda, the Union, and the Management, and I now proceed to consider it, chronologically, as for as possible. It has started with the letter Ex. P. 3 (same as Ex. M. 20) dated 6th March 1964, written by the Union to the Management. The Secretary of the Union, Mr. Prabhakar Ghate, has said therein that he had learnt that Panduraya Gowda had been refused work since the afternoon of the previous day and requested the Management to look into the matter and take him back for " his previous work ", immediately. The management has given a reply to the Union, the same day, under Ex. P. 4 (same as Ex. M. 19). Therein the Management has informed the Union that on the previous day Panduraya Gowda had asked the Manager of the Maidan Hotel to relive him and settle his accounts; the Manager had directed him to the Administrative Office; there also, Panduraya Gowda made the same request; he was asked to tender his resignation if he wanted the settlement of accounts; that he left the office saying he would do so, but did not turn up thereafter, with a letter of resignation; he did not turn up for duty also and had remained absent from duty. The Management has also asked the Union to advise Panduraya Gowda "suitably". After this, the Union wrote the letter Ex. P. 5 (same as Ex. M. 18) to the Management on 8th March 1964. Therein, it has denied the averments made by the Management in Ex. P. 4, asserted that Panduraya Gowda had been refused work and concluded it with a request that " he may be allowed to do his duty which he has been doing prior to 5th March 1964". This is followed by the letter Ex. P. 6 (same as Ex. M. 17) written by the Union to the Management on 20th March 1964, wherein it has been said that Panduraya Gowda had

not yet been allowed to join duty inspite of several letters and concluded it with a request to take him back immediately, with all back wages. Then on 24th March 1964, the Management has written the letter Ex. M. 15 to the Union and issued the notice Ex. P. 7 (same as Ex. M. 16) to Panduraya Gowda, setting out the incident of 5th March (as happened according to it), informing him that his continued absence from the 5th amounts to misconduct and calling upon to show cause why disciplinary action should not be taken against him for the said misconduct. To this show-cause notice, Panduraya Gowda has given the reply Ex. P. 8 (same as Ex. M. 13) on 9th April 1964. Therein, he has denied the incident of 5th March as set out by the Management, reasserted his own account of the incident and concluded it stating :—

> "I am even now ready and willing to do the work which I have been doing before 5th March 1964, and I request you to let me know when I should join my previous post."

On receiving this reply, the Management has written the letter Ex. P. 10 (same as Ex. M. 11) to Panduraya Gowda, enclosing therewith the copy of the letter Ex. P. 10 (a) (same as Ex. M. 12). It has drawn the attention of Panduraya Gowda, to its letters dated 24th March and 6th March. Meanwhile, it appears that the Union had written to the Assistant Labour Commissioner, Mysore, who, in turn had written a letter to the Management on 15th July 1964. To this, the Management has sent the reply Ex. P. 11 (same as Ex. M. 8) dated 27th July 1964 to the Assistant Labour Commissioner, denying the claims of the Union, and asserting its own. On the same day *i.e.*, on 27th July 1964, the Management has written the letter Ex. P. 12 (same as Ex. M. 9) to Panduraya Gowda bringing it to his notice that he had remained absent and had not submitted any explanation to its letters of 24th March and 8th July, and concluded it as under :—

> "Take notice if you fail to join duty forthwith, it is deemed that you are not interested in the employment and suitable action as deemed fit and proper will be taken against you."

16. What happened, thereafter, can only be surmised. Panduraya Gowda has stated in his deposition that he went and joined duty at the Hampankatta Hotel under the same Management. The Attendance Register at Ex. P. 18 (page 30) shows that Panduraya Gowda worked in that Hotel for half-a-day on 3rd August 1964. Thereafter he has been marked absent. He

has also been marked absent during the months of September, October, November and December 1964. In his deposition Pandurayа Gowda has stated that in the Hampankatta Hotel he was asked by Ramachandra Shenoy, the Director of the Opponent Concern, to work as a "cleaner" instead of as a "supplier" and he told him (Ramachandra Shenoy) that he was working as a "Supplier" and not as a "Cleaner" and asked him to give him the work of a "Supplier" and Ramachandra Shenoy told him that he could not give the work of "Supplier" to him and asked him to go away.

17. This means that Pandurаya Gowda joined duty on 3rd August 1964 and worked for half-a-day. Either he has not gone for work thereafter or the Management has refused him work. After the incident, the Management has issued the Notice Ex.P.13 (same as Ex. M. 6) to Panduraya Gowda on 5th August 1964. It has said therein that Panduraya Gowda had wantonly remained absent from the afternoon of 3rd August and asked him to show cause within two days, why disciplinary action should not be taken against him for the said misconduct. The reply of Panduraya Gowda thereto is Ex. P. 14 (same as Ex. M. 4). It does not bear any date but appears to have reached the Management on 11th August 1964 (*vide* Ex. P. 15) Panduraya Gowda has said in this letter that when he joined duty on 3rd August, he was asked to work as a "Cleaner" instead of as a "Supplier", which work he was doing ever since joining the service, and was also asked to go away if he did not want to work as a "Cleaner". Then he has added that:—

> "Since your order is illegal, I am not bound to obey the same. You alone will be responsible for the consequences thereof"

The Management has replied the above letter by Ex. P. 16 (same as Ex. M. 2 and M. 3) dated 17th August 1964. Therein it has denied the contention of Panduraya Gowda that he was working as a "Supplier" and asserted that he was working only as a "Cleaner" and further denied all the allegations made in Ex. P. 14.

18. This is all the correspondence between the parties. Reading the whole correspondence and the oral evidence led before me, I feel that neither party has disclosed the true facts. It is very much evident that the real dispute between Panduraya Gowda and the Management is regarding the nature of work of the former. The Management

wants to urge that Panduraya Gowda was working only as a cleaner and wants to put him back on the same job. On the other hand, the Union wants to urge that Panduraya Gowda was working as a "Supplier" and wants him to be put on the same job. It also appears to me that this dispute started soon after the Satyagraha, when Panduraya Gowda joined duty on 25th February 1964. It is the case of Panduraya Gowda that that from 25th February 1964 to 4th March 1964 also, he worked as a "Supplier", whereas according to the Management, he worked in that period also, as a "Cleaner". This dispute appears to have precipitated on 5th March 1964. It is as much likely that Panduraya Gowda asked the Manager on that day to relieve him and settle his accounts, as it is, that the Management refused to allow him to work. The same thing must have happened on 3rd August 1964 also. In this connection, Panduraya Gowda has stated :—

> "As I was asked to serve as a cleaner in the Hampankatta Hotel, I did not do any work there on the day I joined (Para 10).
>
> I am not prepared to work, even now, as "Cleaner" in the Opponent Concern (Para 11)
>
> I want to be reinstated in the service of the Opponent concern as a "Supplier". If I am to be reinstated as a cleaner, I do not want service under the Opponent Concern (Para 16)"

19. It may be noted now that in the letter Ex. P. 3, the Union has demanded that Panduraya Gowda should be given "his previous work", without mentioning what it was. Then in the letter Ex. P. 5 also, the Union has asked the Management to allow Panduraya Gowda to do "his duty which he has been doing prior to 5th March 1964", hereagain, not mentioning what it was. In the letter Ex. P. 8, Panduraya Gowda has informed the Management that he was ready and willing to do the work he had been doing before 5th March 1964. He has not said what work he was doing before 5th March 1964. It is clear that in all these letters, emphasis has been given to the demand of that work which was being done before 5th March 1964.

20. From the deposition of Panduraya Gowda, we find that he wants reinstatement if the work be that of a "Supplier" and does not want it, if it be that of a "cleaner" On the other hand, the case of the Management is that even upto this day the service of Panduraya Gowda have not been terminated and hence question of reinstatement does not arise at all.

21. I am not sure, whether under the terms mentioned in the Order of Reference made by the Government, I can go into the question whether Panduraya Gowda was working as a "Supplier" or a "Cleaner" All that this Court has been asked to adjudicate upon is the question whether Panduraya Gowda is entitled to be reinstated. This Court has not been called upon to adjudicate on the question whether Panduraya Gowda is entitled to be reinstated as a "Supplier". Such a specific dispute has not been raised. Hence, even if the Union is to succeed, I cannot direct the Management to reinstate Sri. Panduraya Gowda as a "Supplier", as that question has not been specifically referred for adjudication.

22. Even then, I proceed to consider the question whether Panduraya Gowda was serving as a "Supplier" or as a "Cleaner". In the service register his work has been shown to be that of a "Cleaner" and below the entires he has signed (Ex. P. 24). Panduraya Gowda has admitted that his starting salary was Rs. 15 p.m; at the end of one year, he was given an increment of one rupee; and in the subsequent years he was given increments at Rs. 2 per year. So his pay as on 14th December 1963 would be Rs. 18. Mr. Karnad Shashidhar Rao stated during the course of the arguments that the starting salary of a "Supplier" is Rs. 21 and that of a cleaner is Rs. 17 and this is not denied by the Union. From the statement of Panduraya Gowda that he was started on Rs. 15 it is evident that he joined service as a "Cleaner" and not as a "Supplier". It is not the case of Panduraya Gowda that he had been promoted as "Supplier" at any time. His witness Shivappa Chandu (W. W. 2) has stated that he is working as a "Supplier" in the Opponet Concern and like him, Panduraya Gowda was also serving as a "Supplier". In his cross examination, he has stated that he joined as a "Cleaner" 4 years back, worked as such for 2 years and since the last two years' he has been working as a "Supplier". Then he has admitted that even now, he does the work of cleaning the plates, and cutting potatoes and Chillies, if asked. As regards Panduraya Gowda, he has stated that he has never seen him (Panduraya Gowda) doing any work, other than that of a "Supplier" and has never seen him work as a "Cleaner". I cannot understand, as to how and why one Supplier does cleaning work also, and the other, not. Gopal Nayak (M. W. 1) is the Assistant Manager of Maidan Hotel since the last 8-9 years. He has sworn that Panduraya Gowda was working under him only as a "Cleaner" and not as a "Supplier", though at times, he was asking him (Panduraya Gowda) to do the work of a "Supplier",

when any regular supplier was on leave. One significant question put to him in his cross-examination has elicited the following answer :—

> "It is not correct to say that Panduraya Gowda was being given exclusively " Supply work "of recent days."

This means that Panduraya Gowda was working as a "Cleaner" and was given "Supplier's" work only recently. But no evidence has been led to show that he was ever promoted to the post of a "Supplier". In face of this evidence, I am of opinion that the post held by Panduraya Gowda was only that of a cleaner and not that of a Supplier, though occassionally he may have been asked to work as "Supplier" in the absence on leave of any regular "Supplier".

23. No evidence has also been placed before me to show that Panduraya Gowda has been victimised. Many workmen of the Opponent Concern are members of the First Party Union ; many of them had joined the strike ; and many of them had taken part in the Satyagraha. I see no reason why the Management should pick up Panduraya Gowda for the special treatment of victimisation.

24. To conclude the discusion, the Order of Reference has not called upon this Court to determine whether Panduraya Gowda should be reinstated as a "Supplier" and so I cannot give direction, even if the Union succeeds. Assuming that this question is incidental to the points of dispute under Reference, I am of the view that Panduraya Gowda was holding only the post of a "Cleaner" and not that of a "Supplier". But Panduraya Gowda does not want reinstatement, if he is to work only as a "Cleaner". Above all, to this day the Management has not passed any order terminating his services, in any manner whatsoever. For all these reasons, therefore, this Reference, so far as it relates to Panduraya Gowda requires to be rejected and I do so.

25. Now, I proceed to consider the Reference relating to the workman K. Krishna. The averrments made in the claim statement with respect to him are these :—

> He was on leave during the second half of January 1963 and had gone to his native place. When he returned from leave to resume his duty, he found the workmen on Satyagraha. Being a member of the union, he too joined it. Subsequently, the Satyagraha was withdrawn and a settlement reached, on 19th February 1964, through the intervention of the Deputy Commissioner. Under the settlement, the Management was to take back to duty all the

workmen, except about 20 workmen. The Workmen were given time for seven days to join duty. Inpurusance of the settlement, he went to join dutys within the time allowed, but he was not allowed by the Management to do so. He was told by the General Manager that a show cause notice had been issued to him to his home address and he should send a reply to it. He did not receive any Notice. The Management did not take him on duty, though he approached it several times. When the Union wrote to the Management, the latter informed the former that he had been discharged from service by an order dated 24th February 1964. The Order of discharge is illegal and *mala fide* and is also in contravention of Section 33 of the Industrial Disputes Act as it was made during the pendency of conciliation proceedings. It is also against the express terms of the agreement dated 19th February 1964. Hence he is entitled to be reinstated with full back wages etc.,

26. The contentions raised by the Management are these :— The worker Krishna absented himself from duty, from 12th January 1964. The Management, after waiting for some time, sent a notice to him on 20th January 1964, to his last known address, by Registered Post, Acknowledgment Due, calling upon him to explain his absence and also to resume duty within five days and intimation him at the same timet hat if he failed to do so, his services would be terminated. The Registered Notice was returned to the Management, with an endorsement " not known ". Then on 24th February 1964, the Management sent another letter to him by Registered Post, Acknowledgment Due informing him that the previous notice had been returned to it unserved ; he had remained absent from 12th January 1964 ; he had not conveyed his intention to resume duty ; and hence it had terminated his services with effect from 24th February 1964. This letter was also returned to the Management, unserved. The Management intimated this fact to the Union. Since the termination of the services of the worker is a discharge, simpliciter, the provisions of Section 33 of the Act are not attarcted. The discharge of the worker is *bona fide*, just and proper. The worker Krishna was not on leave. There is no material to show that he had joined the Satyagraha. All these averments are an after thought. Hence he is not entitled to any reliefs etc.,

27. The extract from the Service Register at Ex. M. 23 shows that Krishna joined the service on 5th March 1963 as a cleaner and was discharged on 24th February 1964. His home address as recorded therein is, care of, " Chiradkunhi House near

Railway Station, Neeleshwar" In the Attendance Register, Ex. P. 18, he has been marked absent from 12th January 1964 to 31st January 1964 (*Vide* page 3, Serial No. 133). In February , he has been marked absent from 1st to 24th, both days inclusive. Then from 25th to 29th, he was first marked absent by putting the letter " a ". Then the" a "s appearing on these 5 days have been erased and it has been written in the remarks column " discharged on 24th February 1964". Even then, it is significant to note that on the 24th, he has been marked " absent " (*Vide* Ex. P. 18, Page 7, Serial No. 133).

28. Krishna (W. W. 3) has sworn that he went on leave in January 1964, with the permission of one of the Directors, by name Ramachandra Shenoy; he had taken leave for 8 days by giving an application; he overstayed his leave by 8 days, as his mother was ill; he did not write to the Management for extension of leave; when he returned after 15 days, he found the Satyagraha going on and joined it, without informing the Management that he had returned from leave to Mangalore; after the Satyagraha was over, he presented himself for duty, but Pandurang Shenoy refused to take him on duty and told him that a show cause notice had been issued to him and he should submit his reply thereto before joining duty; he had not received any notice; fifteen days later, he again approached Ramachandra Shenoy and told him that he had not received any notice and requested him to take him back on duty; then Pandurang Shenoy told him that he had been dismissed from service etc., This is what he has stated in his examination-in-chief. Then in the cross-examination he has stated that he proceeded on leave on the 5th February 1964 (*Vide* Para 13 of his deposiiton) If he proceeded on leave on 5th February 1964, it would mean that he returned to Mangalore from home after the Sayagraha was called off on 19th February 1964. It would belie the entire story given out by him in his examination-in-chief.

29. He has also approached the First Party Union to get his grievance redressed. He is a member of the Union. The first letter written by the Union to the Management about Krishna is Ex. P. 3 (same as Ex. M. 20) dated 6th March 1964. The Union has said therein :—

> "It has also been reported to us that Sri K. Krishna, worker No. 1530, also has not been allowed to resume his duty even though he reported at your office several times, last week."

The Union has said nothing in this letter about Krishna going on leave, overstaying the leave and joining the Satyagraha immediately on return. March 6, 1964 was a Friday. The "last week", mentioned in Ex. P. 3 may mean the week from February 27th to March 6, or the week from February 21st to February 28th. This would also mean that Krishna returned to Mangalore from leave (if it all he had taken it) after the Satyagraha was called off.

30. The Management has given a reply to Ex. P. 3. It is Ex. P. 4 (same as Ex. M. 19) dated the same day *i. e.*, 6th March 1964. The Management has informed the Union that Krishna was absent from duty from 12th January 1964; notice sent to him had been returned unserved; after waiting for a fairly long time, it had discharged him from service by an order, dated 24th February 1964 and had sent a copy of that order to him. It has also asked the Union to advice Krishna to call at the Office and receive his dues. In reply to Ex. P. 4, the Union has written the letter Ex. P. 5 (same as Ex. M. 18) dated 8th March 1964 to the Management. In this reply also, no mention has been made by the Union, that Krishna had gone on leave. It has not been denied that he was absent from duty from 12th January 1964. The Union has said that it was Surprised to learn that Krishna had been discharged from service on 24th February 1964, though he was presenting himself for duty at the Administrative Office, from 21st February 1964 to 25th February 1964, daily. Thereupon the Union has attacked the discharge order, as being violative of all principles of natural justice, illegal and invalid. Thereafter the Union has written the letter Ex. P. 6 (same as Ex. M. 17) to the Management on 20th March 1964. It has said therein:—

> "Worker No. 1530, Krishna, according to you is discharged on 24th February 1964. This is illegal as it amounts to contravention of Section 33 of the Industrial Disputes Act.Please, therefore, take him back with full wages, immediately."

31. This is all the correspondence regarding Krishna. Out of the two witnesses examined for the Management, Gopal Nayak (M.W. 1) has said nothing about Krishna. Bala Krishna Kamat (M.W. 2) has proved the Notices at Exts. M. 25 and M. 26 and the return of the Registered Covers at Exts. M. 21 and M. 22. Ex. M. 21 and M. 22 are directed to the address given by Krishna when preparing the Service Register and both of them have been returned with an endorsement made by the Postal Authorities as

"not known" Ex. M. 22 is stated to contain the original of Ex. M. 26. and Ex. M. 21 is stated to contain the original of Ex. M. 25. By Ex. M. 26, dated 20th January 1964, the Management has called upon Krishna to explain his absence from 12th January 1964 and join his duty within five days and informed him that if he failed to do so, he would be discharged from service. By Ex. M. 25, dated 24th February 1964 and the Management, after mentioning his absence from 12th January 1964 and the return of the Notice Ex. M, 22 to itself, has informed Krishna that he had been discharged from service with effect from the same day and asked him to attend the office and receive his dues.

32. Now from the evidence on record, I find that, the Union has not been able to prove that Krishna was on leave either from the middle of January 1964 or from 5th February 1964 or that he was participating in the Satyagraha from 4th February 1964 to 19th Febuary 1964. On the other hand, the Management has been able to prove that Krishna was absent from duty from 12th January 1964 and it had discharged him from service with effect from 24th February 1964, after the Notices addressed to his last known address, were returned unserved.

33. Now the question is whether this Order of discharge is legal and valid and deserves to be up-held.

34. The Union has challenged this Order of discharge on various grounds. The first is, that it is illegal because it is against the express terms of the settlement dated 19th Febuary 1964, arrived at between the Management and the workmen, through the Deputy Commissioner. The settlement has been produced at Ex. P. 2. But it is applicable, apparently, to the workmen who had taken part in the Satyagraha and against whom the Orders of suspension had been passed by the Management on or after 4th February 1964. Krishna had neither taken part in the Satyagraha nor had he been kept under suspension. Hence he cannot take advantage of the settlement at Ex. P. 2.

35. The second ground of attack is that it has been passed in contravention of Section 33 of the Industrial Disputes Act. From the document at Ex. P. 1, which is a notice issued by Assistant Labour Commissioner and Conciliation Officer, Mysore, on 17th February 1964, we find that the Management had given a notice under Section 9A of the Act on 6th February 1964, regarding the change of conditions of service of the workmen and the

First Party Union had intervened therein by their letter dated 14th February 1964. The Conciliation Officer has said in the notice that he would conduct the Conciliation Proceedings on 26th February 1964, at Mangalore. So it may be taken as established beyond doubt that the Conciliation Proceedings were pending from 17th February 1964 to 26th February 1964, at least. The Order of discharge has been passed on 24th February 1964, *i.e.*, during the pendency of the Conciliation Proceedings, wherein all the Workmen of the Establishment can be deemed to be "concerned", since the motion was for change of conditions of their service. It is in this context that Section 33 (2) (b) of the Industrial Disputes Act, comes into the picture. Thereunder (so far as is applicable to this case) during the pendency of any Conciliation Proceedings before the Conciliation Officer, the Employer may, for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, the workman concerned in the dispute, provided that no such workman shall be dismissed or discharged, unless he has been paid wages for one month and an application has been made by the Employer to the Authority before which the proceeding is pending, for approval of the action taken by the Employer. Admittedly these formalities have not been followed in the present case by the Management. Mr. K. Shashidhar Rao contends that the provisions of Section 33 (2) (b) of the Act and the proviso thereto would be attracted only when the concerned workman has been discharged for any misconduct and since Krishna has not been discharged for any misconduct, the act of the Management does not fall within the mischief of these provisions. But the Order of discharge shows that Krishna has been discharged because "he had ramained absent and because he had not expressed any intention of resuming the duty. The Management has treated "absence" as "misconduct" in the case of Panduraya Gowda in the letter Ex. P. 7. It has said in that letter:—

> "Your continued absence without leave, amounts to misconduct. Show cause...why disciplinary action should not be taken against you for the said misconduct."

In the letter Ex. P. 13 also, the Management has treated Panduraya Gowda's absence as misconduct. The Management has not got any certified Standing Orders. In their absence, it can be deemed that the Management has been treating absence without leave as misconduct. If Panduraya Gowda's absence without leave amounts to "misconduct", I cannot understand why the same should not hold good in the case of Krishna also. Krishna has been discharged for his continuous absence without leave, which is

"misconduct" as stated by the Management in Ex. P. 7 and Ex.P. 13. The Management, cannot, therefore, contend now that the termination of Krishna's service is only a discharge simpliciter and not a discharge for misconduct. Hence I hold that Krishna has been discharged for misconduct without following the provisions of Section 33 (2) (b) of the Act. The discharge order is, therefore, illegal. It can either be treated as non-existing or one that requires to be set aside, if not ignored. Krishna cannot file a complaint under Section 33A of the Act. This Court has been called upon to decide whether Krishna is entitled to reinstatement. This gives the Court jurisdiction to examine the Order of discharge and decide whether it is legal or illegal and set it aside if found illegal or ignore it. I prefer to set aside the Order of discharge in this case, in view of the wording of the points of dispute formulated in the order of reference. The Second ground of attack on the Order of discharge, therefore, requires to be up-held and I do so.

36. The third ground of attack on the Order of discharge is that it has been passed without giving any opportunity to Krishna to defend himself. The Management, it cannot be denied, has made earnest attempts to give an opportunity to Krishna, by issuing a registered notice. But the Notice has been returned unserved. So, the fact remains that Krishna has had no opportunity to defend himself. No evidence has been let by the Management to show that Krishna deliberately avoided receiving the Notice. The Management has said in the counter statement that if the notice sent to Krishna on the address supplied by himself did not reach him, he cannot "blame anybody except himself". It is contended on behalf of the Union that when the Management found that the notice had been returned unserved, it should have followed the course suggested in the decision reported in 1961 (I) LLJ 303 (Bata Shoe Co., (P) Ltd., *Vs* Ganguly) by publishing the notice in some news-paper with a wide circulation, in the regional language. Since this Course has not been followed by the Management, the Union asks me to apply the principles ennunciated in 1959 (II) LLJ 619 (Rogal Printing Works Vs. Industrial Tribunal) wherein it has been held that where it was found that the employee was not aware of the enquiry proceeding and there was no evidence to show that he had deliberately evaded the service of notice, the order of dismissal deserved to be set aside. On the other hand it is contended by the Management that the principles laid down in 1959 (I) LLJ 285 (McKenzie & Co., *Vs.* Its Workmen) and 1953 (I) LLJ 591 (Mazagaon Dock Ltd., *Vs* Rodrigues) and A.I.R.

1962 Patna 452 (Dr. Paramananda *Vs.* D.L.B. Patna) govern the case. In McKenzie's case, after the Registered notice was returned unserved and after the Union did not supply the address of the delinquent, the Management affixed the Notice on the Notice Board. Even then the delinquent did not appar, In the circumstances, the notice affixed on the Board, was held sufficient. In the instant case, there is no evidence led by the Management to show that it had affixed a Notice on the Board or consulted the Union to obtain the address of Krishna. Hence the decision in McKenzie's case has no application to the present case. In Mazagaon Dock case an employee absented himself from work without permission from September 29 to November 15, 1952. He did not re-appear for work in spite of several letters sent to him. In these circumstances, it was held that his discharge by the Employer was justifiable. Such are not the circumstances in the case on hand. The Patna decision has no direct bearing on the issues involved in this case. There cannot be any doubt about the fact that Krishna was not aware of the Notice nor its contents and the Order of termination is not a discharge simpliciter but is one for misconduct. On this ground also the Order of discharge dated 24th February 1964 requires to be set aside.

37. It follows, therefore, that Krishna requires to be reinstated. But the question will be whether back wages should be given to him, and if so, at what rate. It is proved beyond doubt that he remained absent without leave from 12th January 1964. He is asking for natural justice. But as pointed out in the Patna decision:—

> "Natural justice is not a one sided bargain. The party who invokes it must also be prepared to play his part fairly and squarely. He cannot be on the sly and claim advantage of natural justice from the other party."

Then dealing with the continued absence of an employee it has been observed in the Mazgaon Dock Case:—

> "We must look at this matter from the point of general discipline. Without any reason an employee suddenly leaves his work and does not re-appear until after six weeks in spite of several letters having been sent to him to the Address which he had given. The work of the Concern becomes disrupted and if other arrangements are to be made there will be a fresh disturbance in the office, when such an employee turns up at his sweet

will to resume his work. It would be impossible for concern to carry on their business if this was permitted."

These principles require to be borne in mind when dealing with Krishna. Krishna has remained absent from 12th January 1964 and re-appeared only in the last week of February. This cannot but be considered as an act of indiscipline. The Management has also acted with unreasonable haste in passing the order of discharge. For the period during which Krishna was absent, he is not entitled to any wages. For the period thereafter, I think that a consolidated sum of Rs. 150 as back wages should meet the ends of justice. I cannot grant continuity of service to Krishna because there has been a break of service due to his wanton absence from duty for nearly six weeks.

38. Considering therefore, all these facts and circumstances and the findings recorded by me, I proceed to make the following Award.

AWARD.

1. The Reference is rejected with respect to workmen B. Panduraya Gowda and the demands made by him and the First Party on his behalf are rejected.

2. The Reference is partly accepted with respect to workman Krishna. The Management is hereby directed to reinstate him in his former post and pay him a consolidated sum of Rs. 150 as back wages up to the date of the publication of this Award in the Mysore Government Gazette. This reinstatement, however, would be without continuity of service, but on the emoluments that he was getting on 12th January 1964 and increments, if any, from the date of the publication of the Award. This Award should be implemented by the Management within 15 days of the Publication of the Award.

3. Parties do bear their own costs.

Camp : Bangalore.

P. T. KADKOL,
Presiding Officer,
Labour Court, Hubli.

"Copy"

P. T. KADKOL,
Presiding Officer,
Labour Court, Hubli.

APPENDIX

List of witnesses examined in this case on behalf of

I Party :

W. W. 1 Sri Panduraya Gowda.
2 Sri Shivappa.
3 Sri Krishna.

II Party :

M. W. 1 Sri Gopal Nayak.
2 Sri P. Balakrishna Kamat.

List of documents admitted in this case on behalf of

I Party :

Ex. P. 1 Notice of Conciliation.
2 Memorandum of Settlement D. 19th February 1964.
3 Copy of Letter from I to II Party.
4 Letter from II to I Party.
5 Copy of letter from I to II Party.
6 Do
7 Letter from II to I Party.
8 Copy of letter from W.W. 1 to II Party.
9 Acknowledgment.
10 Letter from II party to W.W. 1.
11 Copy of letter from II Party to A.C.L.
12 Letter from II Party to W.W. 1.
13 Do
14 Copy of letter from W.W. 1 to II Party.
15 Postal Acknowledgment.
16 Letter from II Party to W.W. 1.
17 Attendance Register.
18 Do

II Party :

Ex. M. 1 Postal Acknowledgment.
2 Copy of letter to W.W. 1.
3 Letter from II Party.
4 Letter from W.W. 1 to II Party.
5 Postal Acknowledgment.
6 Letter from II Party to W.W. 1.
7 Postal Acknowledgment.
8 Letter to A.C.L.
9 Letter to W.W. 1 by II Party.
10 Postal Acknowledgment.
11 Letter to W.W. 1 to from II Party.
12 Do
13 Letter from W.W. 1 to II Party.
14 Postal Acknowledgment.
15 Letter to I Party Union.
16 Letter to W.W. 1 from II Party.
17 Letter from I Party to II Party.
18 Do
19 Letter from II to 1 Party
20 Letter from I to II Party.
21 Postal cover by Regd. Post A.M.
22 Postal Cover by Regd. Post A D.
23 Service Register Extract of W.W. 3.
24 Do of W.W. 1.

P. T. KADKOL,
Presiding Officer,
Labour Court, Hubli.